SUPREME COURT OF WISCONSIN

OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

06-OLR-3

Owen R. Williams
Attorney at Law

The Respondent, Owen R. Williams, 67, practices in Amery, Wisconsin. This reprimand is based on the following conduct.

On or about September 14, 1999, Respondent agreed to represent a client in a dispute the client had with a truck dealer/repair shop (Dealer). The client owned a 1988 Peterbilt quad axle dump truck and his livelihood depended on his use of the truck. The client believes that during the course of the representation, Respondent "stole" his truck by selling it to his (Respondent's) friend for far less than the truck was worth.

In July 1999, the client took his truck to Dealer for some repairs. Between July 20, 1999 and the end of August 1999, the client's truck was in and out of Dealer's shop a number of times and the client said that the Dealer failed to properly repair his truck and in fact caused further damage. Dealer billed the client over $4000 for work commencing on July 23, 1999, and billed him an additional amount of approximately $6044 for work commencing on August 25, 1999.

The client disagreed with some of the charges and had paid $1500 at the end of July, which he thought would be applied to the first disputed bill. The client took the truck off Dealer's lot on or about August 31, 1999 and believed he had a written agreement to pay $1000 a week on the bills, pending possible adjustments. Almost immediately, the truck broke down again and this time he took it to a different repair shop.

Dealer believed the client had taken the truck off their lot in violation of Dealer's mechanic's lien and complained to the county sheriff, who had the truck towed from the second repair shop and impounded in anticipation of possible criminal charges. The Dealer also commenced a small claims action against the client on September 10, 1999, (*Dealer 1),* for payment of their first bill in the amount of $4346.

Although the second repair shop had already repaired the truck, before it was towed, the shop removed the parts it had put in the truck, and also removed the truck's transmission, as security for payment for the work it had done. At the time the truck was impounded, it was inoperable.

The client first consulted an attorney other than Respondent, and that attorney prepared an answer in the small claims matter, which answer was filed on September 15, 1999. The answer denied that the client owed the Dealer for the repairs because the repairs had not been done in a workmanlike manner and had caused further damage.

On September 14, 1999, shortly after consulting the first attorney, the client met with Respondent, who agreed to defend the client in the small claims matter and also with respect to any criminal investigation or charges regarding the client's removal of his truck from Dealer's lot. The client said he went to Respondent because the first attorney said he would not file a counterclaim against Dealer. Respondent was substituted as the client's attorney in the small claims matter. The client had no money to pay Respondent and Respondent's fee was not agreed upon at this first meeting.

A few days later, Respondent asked the client to make another appointment and to bring with him the title to his truck. The client signed the truck title and gave it to Respondent.

According to the client, Respondent told him he would use the title to "bond" the truck so the client could continue using it to earn a living until the situation with Dealer was resolved. The client says Respondent explained that his fee of $2500 would be taken out of the bond and that Respondent also told him that he (Respondent) would "countersue" Dealer for damages to the truck and for loss of use of the truck while it was impounded. The client did not understand how the "bond" would work, but thought the money to cover it and Respondent' fee would ultimately come from the money obtained from winning the countersuit. It was not the client's understanding at the time he gave the signed truck title to Respondent that Respondent would transfer ownership of the truck to a third party.

Respondent has a friend and business partner, (friend), who owns an automobile and truck repair shop. Respondent says he told the client that his friend sometimes helps clients of Respondent's who need a loan or can not pay for repairs, by taking title to the client's vehicle, making repairs or otherwise loaning the client money, and then having the client regain title by paying the friend back, with interest. Respondent does not receive any payment from his friend for setting up these arrangements with the friend. Respondent has, however, periodically entered into other business ventures with the friend, such as purchasing real estate for investment purposes.

Respondent states he told the client that his friend would take title to the client's truck, pay for any needed repairs and pay the remaining balance of $1458.35 on the client's truck loan. Respondent says he explained to the client that he could then set up a repayment plan with the friend at 12% interest and that he would also owe the friend $2500 for Respondent's attorneys fees. Respondent admits he told the client that the transaction was like bonding the truck but says he did not tell the client that until after Dealer prevailed in *Dealer 1*.

Respondent says he did not tell the client he would file a counterclaim, but rather told the client he would only defend him in *Dealer 1*. Respondent says he explained to the client that, at that time, they did not have a viable counterclaim against Dealer anyway, because it was the county sheriff who impounded the client's truck, not Dealer. Respondent says he explained to the client that he did not believe, under the circumstances, there was a viable claim against the county.

While the client is sure Respondent told him he would "countersue" Dealer, he does not know if that was going to be done in the small claims matter or later.

Respondent did not memorialize in writing the terms of his agreement with the client or the client's agreement with the friend. The only written sales agreement between the client and the friend was the executed motor vehicle title. Respondent represented the client but not the friend in the transaction between the two.

The friend signed the client's truck title and an application to the Department of Transportation for transfer of the title to him on October 14, 1999. The friend also signed a promissory note on October 14, 1999, promising to pay Respondent $2500 pursuant to a specific payment schedule, but Respondent never asked for or received any payments pursuant to the note.

A trial to the court in *Dealer 1* was held on November 9, 1999. Sometime prior to the trial, Respondent talked to the district attorney, who decided not to file criminal charges against the client for removal of the truck from Dealer's lot.

The client and Respondent agree that subsequent to their second meeting when the client gave Respondent the truck title, they did not meet again before the trial to prepare for it, but did speak on the phone a couple of times.

The client first learned that Respondent had sold the truck to Respondent's friend and had not bonded it when he spoke with Respondent on the phone several days after he gave Respondent the title. The client does not remember if it was at this point or later that Respondent explained what the terms of the arrangement would be between the client and the friend. Upon learning of the arrangement, the client did not object or ask for the return of his truck title because he says Respondent told him not to worry.

In *Dealer 1,* Respondent did not file an amended answer with a counterclaim for loss of use of the truck. When the client testified at the November 9, 1999 court trial about his lost wages, the court pointed out that there was no counterclaim, to which Respondent responded, "No. That will be forthcoming in any subsequent actions, Judge."

The friend testified as an expert witness on the client's behalf at the November 9, 1999 trial in *Dealer 1*. The client never met the friend until the friend testified on November 9, 1999. In questioning the friend at trial, Respondent asked, "Have you had an opportunity to examine the truck that's in the impound lot that is owned by [the client]?"

At the close of the trial, the court ruled in favor of Dealer, holding that the client had failed to prove that the breakdown of the truck shortly after the subject repair work was caused by faulty work on the part of Dealer. Dealer received a money judgment against the client in the amount of $4407.19 and obtained a writ of execution against the truck based on the judgment.

Respondent filed a motion to quash the writ of execution, claiming that title to the truck had been transferred to the friend and the client was no longer the truck's owner. In addition to obtaining title to the truck on October 14, 1999, the friend made the final payment of $1458.35 on the client's truck loan on November 30, 1999. A hearing on the motion to quash was held on January 21, 2000, after which the court denied the motion.

Meanwhile, Dealer filed a second action against the client on December 8, 1999, (*Dealer 2)*, to secure payment of their second bill in the amount of $6044 and to enforce their mechanic's lien. An amended complaint, filed on February 10, 2000 added the friend as a defendant and alleged that the transfer of the truck to the friend was fraudulent and that the friend knew of the plaintiff's claim in *Dealer 1*.

The client sent letters to Respondent dated February 10 and 17, 2000 asking Respondent to respond to several questions, including when a counterclaim would be filed, but Respondent did not respond to the letters. The client tried to call Respondent several times both before and after the February letters, but says he never received a response. Subsequently, in April or May 2000, the client retained successor counsel to represent him in *Dealer 2.*

After *Dealer 2* was filed, Respondent continued to represent the client and also represented the friend in the matter, until successor counsel replaced him as the client's attorney. Respondent is not sure when his representation of the client ended. Successor counsel, on behalf of the client, filed an answer and counterclaim to the amended complaint on May 30, 2000. The counterclaim alleged breach of contract, unreasonable and unjust charges and loss of use of the truck.

Respondent admitted service for the friend on April 7, 2000 and continued to represent the friend in *Dealer 2* until he secured an order dismissing the friend as a defendant on June 15, 2001, in exchange for the friend posting alternative security to the truck, to be used if Dealer prevailed. Additionally, in exchange for payment of the *Dealer 1* judgment and an outstanding towing fee, the friend obtained possession of the truck, which had remained impounded since December 1999.

Respondent did not consult with or obtain a written conflict waiver from the client with respect to his dual representation of the friend in *Dealer 2* or to his representation of the friend in *Dealer 2* after his representation of the client ended, nor did Respondent obtain conflict waivers from his friend.

Dealer 2 was suspended in the fall of 2001 while a bankruptcy action filed by the client was pending. When the matter resumed in 2002, the plaintiff made a motion *in limine* seeking to preclude the client's counterclaim based on the doctrines of fact and issue preclusion because no counterclaim had been brought in *Dealer 1*. After researching the issue, successor counsel agreed with the plaintiff and agreed that the counterclaim should be dismissed. As to Dealer's complaint, successor counsel told the court that the client had discharged his obligation to Dealer in bankruptcy and said, "I think the only issues, there was some money held in bond by a third party. It affects – it doesn't affect my client. Rather, it's kind of moot to my client, their judgment." No issues remained to be litigated and judgment in favor of the plaintiff was entered in *Dealer 2* on November 18, 2002.

After obtaining possession of the truck in June 2001, the friend paid the second repair shop's bill and retrieved the transmission. The friend repaired the truck in his own shop, using some new and some used parts. The friend said he also painted the truck because it had a lot of rust, strengthened the supports for the "box," and put new tires on the truck. The friend made several other expenditures as well. According to the friend, the general condition of the truck is better today than it was when it was first impounded. The friend does not know exactly how much he spent on the truck and is unable to locate his records because he no longer has a bookkeeper. The friend estimates he spent at least $8000 in addition to paying Dealer's two judgments and the balance on the client's truck loan.

Except for using the truck for personal reasons on a few occasions, the friend has not used the truck since he obtained possession of it.

A third party recently offered the friend about $25,000 to purchase the truck, but the friend declined because of the client's pending grievance against Respondent.

The client believes his truck was in excellent condition in 1999 and he submitted four recent opinions about the 1999 value of the truck. The estimates range between $30,000 and $40,000. The friend states there is "no way" the truck was worth that much in 1999, because it is in much better condition today and currently has a market value of about $25,000.

Since the friend obtained possession of the truck, neither he nor Respondent has contacted the client or his successor counsel about what the client would need to do to regain title to the truck. Likewise, neither the client nor his attorney has contacted Respondent or the friend about reclaiming the truck.

On September 12, 2005, the client filed a *pro se* civil complaint against Respondent and the friend asking for actual and punitive damages.

By failing to reduce the agreement between the client and the friend to writing, by failing to adequately explain to the client the nature and terms of the transaction with the friend, and by failing to ensure that the client understood why Respondent asked for the title to his truck, Respondent violated SCR 20:1.4(b), which states:

> A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

By failing to adequately consult with the client to ensure that the client understood Respondent's decision not to file a counterclaim in *Dealer 1*, and by failing to consult with the client about the requirements for and appropriateness of a counterclaim subsequent to the *Dealer 1* judgment, Respondent violated SCR 20:1.2(a), which states, in relevant part,

> A lawyer shall abide by a client's decisions concerning the objectives of representation…and shall consult with the client as to the means by which they are to be pursued.

By failing to respond to at least two letters from the client requesting responses to specific questions, including a question about when a counterclaim would be filed, and by failing to respond to telephone calls from the client, Respondent violated SCR 20:1.4(a), which states:

> A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

By representing the client in a business transaction with Respondent's friend and business partner, from whom Respondent had received a promissory note for the client's attorneys fees, without consulting with the client and obtaining his written consent, Respondent violated SCR 20:1.7(b), which states:

> (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
>
> > (1) the lawyer reasonably believes the representation will not be adversely affected; and
> >
> > (2) the client consents in writing after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

By stating in a question to a witness at the *Dealer 1* trial that the truck was owned by the client, by failing to disclose to the court in *Dealer 1* that the truck's title had been conveyed to the friend, and by using the friend as an expert witness in a matter regarding a truck that the friend, in fact, owned, Respondent violated SCR 20:8.4(c), which states, "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

By representing the client at the same time that he represented his friend in *Dealer 2,* without obtaining written consent from either of them for the dual representation, Respondent violated SCR 20:1.7(b).

By continuing to represent his friend in *Dealer 2*, when he had formerly represented the client in the same lawsuit, without obtaining the client's written consent, Respondent violated SCR 20:1.9(a), which states:

> A lawyer who has formerly represented a client in a matter shall not:
>
> > (a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents in writing after consultation.

Respondent has no prior discipline.

In accordance with SCR 22.09(3), Attorney Respondent is hereby publicly reprimanded.

Dated this 24th day of February, 2006.

SUPREME COURT OF WISCONSIN

/s/ Timothy L. Vocke
Timothy L. Vocke, Referee